



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 08-07066
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: Pro Se

December 23, 2008

Decision

HARVEY, Mark W., Administrative Judge:

Applicant's statement of reasons (SOR) alleged 17 delinquent debts, totaling about \$168,000. His first and second mortgagees were listed on the SOR and totaled about \$133,000. They went to foreclosure; however, results of the foreclosure sale are unknown. One SOR debt duplicated another SOR debt. Fourteen delinquent debts are not resolved (total: about \$25,000). He did not make any payments on these 14 delinquent debts for more than a year. Applicant failed to mitigate financial considerations security concerns. Eligibility for a security clearance is denied.

Statement of the Case

On February 19, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or Security Clearance Application (SF 86) (Government Exhibit (GE) 1). On October 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him,¹ pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20,

¹Government Exhibit (GE) 6 (Statement of Reasons (SOR), dated October 3, 2008). GE 6 is the source for the facts in the remainder of this paragraph unless stated otherwise.

1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised. The revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, are effective within the Department of Defense for SORs issued after September 1, 2006. The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On October 28, 2008, Applicant responded to the SOR allegations, and requested a hearing (GE 8). Department Counsel indicated he was ready to proceed on November 17, 2008, and on that same date the case was assigned to me. At the hearing held on December 10, 2008,² Department Counsel offered four exhibits (GEs 1-4) (Transcript (Tr.) 17), and Applicant did not offer any exhibits (Tr. 10). There were no objections, and I admitted GE 1-4 (Tr. 18). Additionally, I admitted a Hearing Notice (GE 5), the SOR (GE 6), and Applicant's response to the SOR (GE 7). I received the transcript on December 18, 2008.

Findings of Fact³

In his SOR response, Applicant admitted responsibility for the seventeen SOR delinquent debts totaling about \$168,000 (GE 7). His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 33-year-old employee, who has been employed by a defense contractor since November 2007 (Tr. 6, 20). His work is in communications or public relations (Tr. 21). He has not had any unemployment since November 2007 (Tr. 36). Applicant earned a Bachelor's degree in Fine Arts in 1997 (Tr. 6, 19, 34). He has a part-time entertainment job drawing pictures two days a week in the evenings (Tr. 20). He does not currently hold a security clearance (Tr. 7). He is married with four children ages five, nine, eleven, and fourteen (Tr. 19). His wife has been a grade school teacher for the last three years (Tr. 21). He has not served in the military (GE 1).

Applicant's security application did not disclose a felony conviction (GE 1). His record has no indication of illegal drug abuse, mental disability or instability. He has never left employment under adverse circumstances. When he completed his 2008 SF 86, he disclosed the foreclosure of his residence, a vehicle repossession and several

²Applicant waived his right to 15 days notice of the date and location for his hearing (Tr. 13-15).

³Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

other delinquent SOR debts (GE 1). He received an Eagle Scout Award from the Boy Scouts (GE 1).

Applicant admitted responsibility for all 17 delinquent SOR debts, totaling about \$168,000 (Tr. 22). He did not have arrangements with any of the creditors to pay his debts (Tr. 22). His most recent contact with any of the SOR creditors was when he communicated with the creditor in SOR ¶ 1.i (\$2,043) around April 2008, when he informed the creditor that he was releasing the vehicle to a junkyard (Tr. 23). His next most recent communication with a creditor occurred around January 2008, when he discussed repossession of the vehicle related to the debt in SOR ¶ 1.o (\$10,420) (Tr. 23).

The status of Applicant's SOR debts is summarized in the table below:

SOR PARAGRAPH AND TYPE OF DEBT	AMOUNT	STATUS
¶ 1.a Debt-home repair	\$66	Delinquent debt
¶ 1.b First Mortgage	\$102,824	Unknown Status (Tr. 25-26)
¶ 1.c Online loan	\$908	Delinquent debt
¶ 1.d Vehicle loan	\$11,208	Delinquent debt
¶ 1.e Furniture purchase	\$2,248	Delinquent debt
¶ 1.f Not sure of debt's Source	\$87	Delinquent debt
¶ 1.g Second Mortgage	\$30,316	Unknown Status (Tr. 25-26)
¶ 1.h Home depot credit Account	\$934	Delinquent debt
¶ 1.i Unspecified debt	\$4,238	Delinquent debt
¶ 1.j Medical debt	\$100	Delinquent debt
¶ 1.k Utilities debt	\$106	Delinquent debt
¶ 1.l Car loan	\$2,043	Delinquent debt
¶ 1.m Unspecified debt	\$52	Delinquent debt
¶ 1.n Returned check	\$42	Delinquent debt
¶ 1.o Car loan	\$10,420	Applicant believes duplication of SOR ¶ 1.d
¶ 1.p Overdrawn bank Account	\$302	Delinquent debt
¶ 1.q Credit card	\$2,840	Delinquent debt
TOTAL	\$168,734	After deducting mortgages and duplication total is: \$25,174

Applicant planned to make arrangements with a financial advisor and debt consolidation company to resolve his financial problems (Tr. 24, 27). He hoped to pay off the small debts first, and then the larger ones (Tr. 24). He wants to pay and plans to pay his delinquent debts (Tr. 45). His financial counseling was at a preliminary stage,

involving completion of forms rather than assembling a budget and a specific plan of debt resolution (Tr. 28). In June 2007, Applicant learned about bankruptcy from a bankruptcy attorney (Tr. 26, 36-37). At that time, Applicant decided not to pay his debts because he planned to discharge them through bankruptcy (Tr. 37). However, he subsequently decided not to seek discharge of his debts through bankruptcy (Tr. 26, 36-37). His problem with bankruptcy is paying the attorney and fees involved (Tr. 26-27).

Applicant's mortgage was foreclosed; however, he did not know the result of the foreclosure sale and had not learned whether he still owed any money or not on the mortgages (SOR ¶¶ 1.b and 1.g). In addition to the SOR debts, he owed \$7,200 to a landlord (Tr. 29). The debt to his landlord was being resolved with a \$20 per month payment plan (Tr. 30). His wife had two student loans, and the federal government kept "a lot of" his tax refund (Tr. 30).

Applicant attributed his financial problems to ignorance, procrastination, unemployment in 2001, and underemployment when he was a car salesman and pizza deliveryman (Tr. 31-33). He also noted the costs associated with caring for four children (Tr. 31, 32). In 2006, Applicant and his family moved to a different state where they now live to increase their income (Tr. 33, 35). Applicant's residence in the state where he lived before 2006 went into foreclosure.

Applicant rents his current resident for \$1,430 per month (Tr. 37, 44). Applicant and his spouse own three vehicles: a 1997 Ford Taurus (received as a gift), a 1996 Chevrolet Cavalier (currently no lien), and a 1997 Suburban (purchased in June 2008 and it has a \$280 monthly payment due on lien) (Tr. 38). He does not own any stocks and bonds or have a 401K at work (Tr. 38). He does not have any other significant financial assets (Tr. 39).

Applicant's personal financial statement indicates Applicant and his wife have total monthly net income of about \$6,000, monthly expenses of about \$3,500, and monthly debt payments of about \$600 (Tr. 39). His net monthly remainder is about \$1,900 (Tr. 39).

A significant financial problem for Applicant is overdrafts on Applicant and his wife's joint checking account (Tr. 40). He thought the average number of monthly overdrafts was about eight (Tr. 41); however, in October 2008 they had about 30 overdrafts, resulting in bank costs of \$36 per overdraft (Tr. 40-41). Applicant planned to make elimination of overdrafts a priority in his future financial plan (Tr. 40-41).

Applicant did not have any evaluations from his employer (Tr. 42-43). However, he believed he would be described as dependable, responsible and a good worker (Tr. 42-43).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the Applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [A]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the Applicant that may disqualify the Applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an Applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An Applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude one relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006) provides, “Applicant’s credit report was sufficient to establish the Government’s prima facie case that Applicant had SOR delinquent debts that are of security concern.” Applicant’s history of delinquent debt is documented in his credit report, his 2008 security clearance application, his SOR response, and at his hearing. Applicant’s SOR alleged 17 delinquent debts, totaling about \$168,000. His first and second mortgagees totaled about \$133,000 and went to foreclosure. Results of the foreclosure sale are unknown. One debt was a duplication, leaving 14 delinquent debts, totaling about \$25,000. He did not establish any payments on these 14 delinquent debts for the year prior to his hearing, even though he and his wife were employed in their current jobs. He did not establish any track record of debt resolution of these 14 delinquent SOR debts. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). “Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.” ISCR Case No. 07-00852 at 3 (App. Bd. May 27, 2008) (citing *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990)). Because the government has raised financial considerations security concerns, the burden now shifts to Applicant to establish any appropriate mitigating conditions. Directive ¶ E3.1.15.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's conduct does not warrant application of any mitigating conditions. His financial problems are not isolated because he currently has 14 delinquent debts totaling about \$25,000. The ongoing nature of his delinquent debts is "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Moreover, I am not convinced his debts "occurred under such circumstances that it is unlikely to recur and does not cast doubt on the [her] current reliability, trustworthiness, or good judgment." Although he has been paying some of his non-SOR debts, he has failed to establish payments towards his SOR debts even though he and his wife have been steadily employed for more than a year.

Under AG ¶ 20(b), Applicant's unemployment and underemployment contributed to his financial problems. As such, some of his debts are due to forces beyond his control. However, he did not provide sufficient information to establish that he acted responsibly under the circumstances or made sufficient efforts to address his delinquent debts especially those debts which remained delinquent even though he has been steadily employed for at least year.⁴ He admitted that he has not maintained contact

⁴"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012

with his SOR creditors, and made very limited efforts to pay the 14 delinquent SOR debts.

AG ¶¶ 20(c) and 20(d) do not apply. Applicant did not complete financial counseling. There are no indications that “that the problem is being resolved or is under control” because the amount of delinquent debt has been unchanged for at least the last 12 months. There is insufficient information to establish that Applicant showed good faith⁵ in the resolution of his delinquent SOR debts because he did not establish that his failure to pay his delinquent debts was reasonable and necessary under the circumstances.

AG ¶ 20(e) does not apply because Applicant did not dispute his responsibility for any debts. I conclude Applicant’s overall conduct in regard to his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. He failed to resolve or make payments to 14 creditors to whom he owed a total of about \$25,000. He did not provide good cause for his failure to set up payment plans and make some payments despite having an opportunity to do so. Based on my evaluation of the record evidence as a whole, I conclude financial considerations are not mitigated.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the

at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with his or her creditors and attempted to negotiate partial payments to keep debts current.

⁵The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. AG ¶ 2(c).

There is some evidence tending to mitigate Applicant's conduct under the whole person concept. His dedication to his work, his family and his country is a very positive indication of his good character and trustworthiness. He improved his employability and prospects for greater income through his move to the state of his current residence. His wife completed her education and has full-time teaching employment. Applicant has a part-time job in addition to his employment with the federal contractor to increase his income. He is completely loyal to his country. Applicant's hard work, record of good employment and law-abiding character weigh in his favor. There is no evidence of any security violation. His non-SOR debts are current and being paid. These factors show some responsibility, rehabilitation, and mitigation.

The mitigating evidence under the whole person concept and the adjudicative guidelines are not sufficient to warrant his access to classified information at this time. The overall amount of unresolved debt is about \$25,000 and substantial. His mortgages will be a security concern in the future, if he still owes the creditors money. He and his spouse have been continuously employed for the last year. They have the funds to arrange and begin payment plans. One significant financial problem is they frequently overdraw their checking account and the resultant fees are an obviously avoidable expense. Applicant has been aware of the security significance of his delinquent SOR debts since he received the SOR in October 2008, and he did not take any material actions to resolve his delinquent debts. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has not mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c to 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h to 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraphs 1.p to 1.q:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

Mark W. Harvey
Administrative Judge